



Comptroller General
of the United States

Washington, D.C. 20548

Gary
147339

Decision

Matter of: J.G. Van Dyke & Associates

File: B-248981; B-248981.2

Date: October 14, 1992

Del Stiltner Dameron, Esq., and Thomas S. Williams, Esq., McKenna and Cuneo, for the protester, Kurt D. Summers, Esq., General Services Administration, for the agency.

Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably found that proposal for computer systems support services was technically unacceptable, where proposed staffing of critical tasks--integration, testing, and evaluation of new hardware and software--was only half the level required under the government estimate.

2. Discussions of revised proposal were meaningful where agency led protester into elements of its proposal perceived as contributing to excessively high cost, including proposed labor hours, and in response protester reduced proposed labor hours in its best and final offer.

3. Protester's high technical score for proposed staffing plan was not inconsistent with rejection of its proposal as technically unacceptable, where solicitation contained evaluation criterion specifically providing for rejection for failure to make adequate technical commitment.

DECISION

J.G. Van Dyke & Associates (VDA) protests the General Services Administration's (GSA) award of a contract to Booz, Allen & Hamilton (BAH) under request for proposals (RFP) No. GS-KEGA-92-0100, to provide computer systems support services. VDA asserts that GSA failed to hold meaningful discussions and did not follow the stated evaluation criteria.

We deny the protests.

The solicitation was issued on December 21, 1991; it provided for computer systems support for the Department of

Defense's Anti-Drug Network (ADNET), for which GSA provides technical assistance. The RFP contemplated award of a cost-plus-fixed-fee contract to the offeror whose proposal was most advantageous to the government, price and other factors considered; it encompassed 23 contract line items (CLINs), each of which detailed a discrete task.

The solicitation provided for the separate evaluation of technical and cost proposals. In the technical area, two categories, technical approach and staffing plan, were approximately equal in importance; a third category, project management plan, was half as important as each of the first two. With respect to the staffing plan, offerors were instructed to provide resumes and other detailed information for their key personnel and analysts, to be evaluated for general suitability for performing the work identified in the RFP; offerors also had to provide a table showing the estimated labor hours for key personnel and analysts. With respect to cost proposals, the RFP stated that cost would be a significant consideration, whose importance would increase as proposals were found more nearly equal in other areas. Offerors were required to include estimated labor hours for each CLIN with their cost proposals.

On January 27, 1992, GSA received initial proposals from four offerors, including VDA and BAH. As evaluated by the contracting officer, VDA's proposed cost exceeded by significant amounts both the government's independent cost estimate and the proposed cost of the ultimate awardee, BAH. Technical proposals were evaluated by a technical evaluation board (TEB), which among other things compared proposed labor hours (level of effort) with an independent government estimate of the number of labor hours required for contract performance. Although VDA's overall proposed hours were found to be significantly higher than the government estimate, GSA determined that the excess was limited to CLINs 2, 5, 6, and 18, and in discussions specifically advised VDA that its proposed labor hours for these CLINs were significantly higher than the government estimate.

In its revised proposal, VDA greatly reduced its proposed hours in those four CLINs, with the result that VDA's overall level of effort, as reflected in its proposed labor hours, was reduced from 134 percent to 108 percent of the government estimate. Prior to requesting best and final offers (BAFO), the contracting officer held oral discussions with all three competitive range offerors regarding their cost proposals; in the case of VDA, these discussions were aimed at reducing VDA's proposed cost, which the agency still considered significantly higher than the government estimate.

On March 26, VDA submitted its BAFO, which reflected a reduction in its proposed labor hours from 206,248 to 147,386--a decrease from 108 percent of the government estimate (revised proposal) to 78 percent of that estimate.¹ VDA's reduction in labor hours occurred primarily in CLINs 2, 3, and 7.² In CLIN 2, the TEB determined that the reduction would have minimal impact. The reductions in the other two CLINs, however, were considered unacceptable. Those two areas, which VDA had reduced to approximately half the level of effort called for by the government estimate, involved integrating, testing, and evaluating new ADNET hardware and software at site installations. The TEB considered these tasks critical to the performance of the entire contract, and determined that VDA's proposed level of effort was not sufficient to perform them. On that basis, the board found VDA's BAFO technically unacceptable.³ On June 2, GSA awarded the contract to BAH, as the offeror whose proposal was most advantageous to the government. VDA requested and received a debriefing; this protest followed.

LACK OF MEANINGFUL DISCUSSIONS

VDA contends that the agency failed to hold meaningful discussions following submission of its revised proposal, by telling VDA that its proposed staffing was significantly higher than the government estimate without indicating that the excess was in any particular CLIN. According to VDA, the information it received in discussions of its initial proposal, where the agency referred to the four specific CLINs considered to be problematical, established a

¹In connection with the evaluation of BAFOs, the TEB also reevaluated the government estimate of required labor hours, and concluded that it was accurate.

²The following are VDA's proposed labor hours and the government estimate for pertinent CLINs:

<u>CLIN</u>	<u>Initial</u>	<u>Revised</u>	<u>BAFO</u>	<u>Gov. Est.</u>
2	56,215	41,276	20,460	19,800
3	26,342	26,745	13,052	26,440
7	15,664	20,661	7,298	14,540
9	9,523	10,423	7,412	8,240

³Although VDA's overall level of effort was the lowest of the three firms that submitted BAFOs, its proposed cost was still the highest--\$11,446,358, compared to BAH's \$10,293,135. GSA concluded, moreover, that VDA's actual cost would be even higher were it to adequately staff CLINs 3 and 7.

"standard of specificity" for this procurement that VDA assumed was being followed in connection with its revised proposal; consequently, when GSA failed to refer to specific CLINs in discussing its revised proposal, VDA assumed that the agency's concerns about excessive labor hours applied to all CLINs. VDA argues that GSA should have advised it that the labor hours in VDA's revised proposal significantly exceeded the government estimate only in CLINs 2, 7, and 9. Due to GSA's failure to direct VDA's attention to those particular CLINs, VDA argues, it was misled into making its staffing reductions in inappropriate CLINs.

GSA responds that it was concerned about VDA's high cost generally--not merely its labor hours--and therefore had no reason to discuss VDA's staffing levels for specific CLINs. In this context, the agency explains, the contracting officer raised concerns about several elements of VDA's cost in addition to its level of effort, including VDA's proposed fee and its subcontractor direct labor rates. GSA notes further that although it advised VDA of the need to lower its costs, the contracting officer also specifically cautioned VDA against endangering the viability of its proposal in the process.

In negotiated procurements, contracting officers generally are required to conduct discussions with all offerors whose proposals are within the competitive range. Columbia Research Corp., B-247631, June 22, 1992, 92-1 CPD ¶ 539. The competitive range must include all proposals that have a reasonable chance of being selected for award. National Sys. Mgmt. Corp., 70 Comp. Gen. 443 (1991), 91-1 CPD ¶ 408. Discussions are required to be meaningful; that is, an agency is required to point out weaknesses, excesses or deficiencies in proposals unless doing so would result in technical transfusion or technical leveling. Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527. In general, agencies must lead offerors into the areas of their proposals which require amplification or correction. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424. However, the actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and we generally limit our review of the agency's judgments to a determination of whether they are reasonable. GeoMet Data Servs., Inc., 71 Comp. Gen. 302 (1992), 92-1 CPD ¶ 259; Chadwick-Helmuth Co., Inc., 70 Comp. Gen. 88 (1990), 90-2 CPD ¶ 400.

We find that GSA held meaningful discussions. VDA itself, in characterizing the content of the discussions, confirms that the contracting officer raised concerns about three elements of its proposed cost--overall labor hours, fee, and subcontractor direct labor rates. Thus, by VDA's own account, GSA led the offeror into those areas of its

proposal about which the agency had concerns. As indicated above, this is all the agency was required to do, Northwest Regional Educ. Lab., B-213464, Mar. 27, 1984, 84-1 CPD ¶ 357 (if an agency "had simply informed the offerors that their cost proposals were either too high or in excess of the government's estimate, then [the agency] would have met the requirement for meaningful discussions by alerting the offerors to a perceived weakness in their proposals"); see also GeoMet Data Servs., Inc., supra (agency's advice to protester that its prices exceeded government estimate satisfied requirement for meaningful discussions).

We reject VDA's argument that it was misled into making inappropriate staffing reductions by GSA's failure to adhere to the "standard of specificity" established during the initial discussions. In this regard, VDA does not assert that the staffing levels ultimately proposed for CLINs 3 and 7 were adequate; it simply argues that, based on the inadequate advice it received from GSA, it had no choice but to reduce its staffing sharply. This argument fails to explain why VDA, while making reductions, did not retain adequate staffing for CLINs 3 and 7; under no reasonable interpretation can the agency be said to have instructed VDA to lower its hours to an unacceptably low level. One of the purposes of discussions is to ascertain whether an offeror understands the requirements of the solicitation; discussions that are overly specific may be self-defeating. See Environmental Health Research and Testing, Inc., B-243702.2, Oct. 29, 1991, 91-2 CPD ¶ 389 (discussion question adequately directed offeror to area of agency's concern; more specific question would have defeated agency objective of discovering whether offeror understood solicitation requirements). Whether or not VDA believed it had to make cuts in its staffing levels, it was responsible for determining, and then proposing, a level of effort adequate to demonstrate that it understood and could meet critical solicitation requirements. Id.

IMPROPER EVALUATION

GSA's report on VDA's protest included the complete record of GSA's evaluation of BAH's and VDA's proposals, under a protective order issued by our Office. Based on that record, VDA raised as a second basis for protest the allegation that GSA improperly found its proposal unacceptable on the basis of unstated evaluation criteria. VDA points out that its BAFO received (1) an overall technical score of 860, compared to BAH's score of 735; and (2) a score of 345 for its staffing plan, compared to BAH's 300. VDA contends that these higher scores--particularly the score for staffing plan, where proposed labor hours were one of the factors evaluated on the TEB's scoring forms--indicated that VDA's proposal was superior, notwithstanding

its staffing reductions in CLINs 3 and 7. Consequently, VDA reasons, the agency must have given disproportionate importance to staffing levels in CLINs 3 and 7 that was neither provided for in the stated evaluation criteria nor reflected in the TEB's scoring of proposals. VDA concludes that, but for this arbitrary action, VDA would have received the award on the basis of its significantly superior technical score.

GSA responds that its assessment that VDA's proposal entailed an unacceptably high risk that critical tasks could not be performed, due to inadequate staffing, was made independently of its scoring of VDA's staffing plan, under RFP evaluation criterion ¶ M.1.2. That criterion explicitly provided that:

"[A]ny proposals which are unrealistic in terms of technical commitment or are unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risk of the contract requirements and [this] may be grounds for the rejection of the proposal."

According to GSA, the TEB determined under this criterion that VDA's inadequate staffing for critical tasks (1) constituted an unrealistically low level of technical commitment, and (2) resulted in an unrealistically low proposed cost, since CLINs 3 and 7 were not adequately funded. GSA further explains that the high technical score VDA received for its staffing plan reflected the high quality of its proposed personnel's experience; the score did not measure the adequacy of VDA's proposed labor hours (level of effort), which were assessed (but not scored) and found unacceptable under criterion ¶ M.1.2.

The evaluation of proposals is the function of the procuring agency, requiring the exercise of discretion and informed judgment. We will not conduct a de novo review of proposals or make an independent determination of their acceptability or relative merit. Maschoff, Barr & Assocs., B-228490, Jan. 26, 1988, 88-1 CPD ¶ 77. We will question contracting officials' determinations only if unreasonable or in violation of procurement statutes or regulations. Id. Although technical point scores are useful as guidelines in the procurement process, the selection should not be based on the difference in technical scores per se, but on the contracting agency's judgment concerning the significance of that difference. We will look to whether the record reflects that the judgment was reasonable. Burnside-Ott Aviation Training Center, Inc.; Reflectone Training Sys., Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158.

We find that GSA reasonably determined that, notwithstanding VDA's higher score, its proposal was unacceptable. Evaluation criterion ¶ M.1.2, as noted above, specifically provided that proposals could be rejected if they were found to have an inadequate or unrealistic level of commitment. Under that criterion, GSA found that VDA's staffing was too low for the critical tasks involved and VDA does not dispute the agency's view. The hours VDA proposed under CLINS 3 and 7 were only half the government estimate, and the record provides no basis for us to question GSA's conclusion that it could not reasonably accept that proposal. See A.T. Kearney, Inc., B-205025, June 2, 1982, 82-1 CPD ¶ 518 (agency reasonably considered offeror's proposed level of effort to be crucial to determining whether offeror could reasonably accomplish contract work; agency properly concluded that, based on degree to which offeror departed from agency's estimated required level of effort, level of effort was insufficient and proposal was technically unacceptable).

Under the circumstances, the mere fact that VDA received an overall higher technical score than BAH did not preclude GSA from finding VDA's proposal unacceptable. Because GSA had a reasonable basis for rejecting the protestor's proposal, the fact that it received a higher technical score than the awardee was not determinative. See Maschoff, Barr & Assocs., supra (in solicitation for cost-plus-fixed-fee contract, proposal with higher technical score and lower cost than awardee's properly was found technically unacceptable for failure to meet staffing levels implicit in RFP requirements; see also Louisiana Foundation for Med. Care, B-225576, Apr. 29, 1987, 87-1 CPD ¶ 451 (notwithstanding higher technical score, protestor's proposal properly was found technically unacceptable for deficiencies in meeting solicitation requirements in two critical areas). Consequently, we find nothing objectionable in the rejection of VDA's proposal. See Maschoff, Barr & Assocs., supra; Louisiana Foundation for Med. Care, supra.


In the alternative, VDA asserts that, before making an award to any other firm, GSA was required to hold another round of discussions to resolve any concerns it had about the staffing proposed in VDA's BAFO. This argument is without merit. An agency is not required to reopen negotiations after BAFOs are submitted; an offeror that substantially revises its proposal in its BAFO assumes the risk that the proposal will be rejected as unacceptable without further discussions. The Mgmt. and Technical Servs. Co., a subsidiary of Gen. Elec. Co., B-209513, Dec. 23, 1982, 82-2 CPD ¶ 571 (where protestor's proposed staffing was reduced more than 20 percent in BAFO, agency reasonably found proposal unacceptable; agency was not obligated to reopen

discussions with protester prior to awarding contract to offeror proposing more appropriate staffing levels).

UNFAIR EVALUATION

On September 2, VDA raised for the first time the allegation that, based on the labor hours proposed by BAH, and applying the same standard used to evaluate its own proposal, BAH's proposed level of effort also should have been found unacceptable for CLINs 3 and 7. This allegation is untimely. Under our Bid Protest Regulations, a protest must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(2) (1992). In response to VDA's first protest, under a protective order issued by our Office, VDA was provided BAH's complete proposal and GSA's complete evaluation record. VDA received those documents on July 14. On July 24, based on those materials, VDA timely filed a supplemental protest (discussed above), objecting to the manner in which its proposal had been evaluated. In that protest, however, VDA did not raise the allegation it raises here. Because this argument is based on the documents it received, VDA was required to raise it within 10 working days after receipt of those documents. VDA did not do so, instead waiting until September 2 to raise this argument; the argument therefore is untimely and will not be considered.⁴

The protests are denied.


for James F. Hinchman
General Counsel

⁴Although VDA argues that its initial protest encompassed allegations of miscalculation of BAH's proposal, in order to be timely the specific allegation discussed here had to be raised within 10 days of VDA's receipt of the documents on which it is based.